Arbitration CAS 2015/A/3915 Iago Gorgodze v. International Paralympic Committee (IPC), award of 3 February 2016

Panel: Mr Conny Jörneklint (Sweden), President; Mr Michele Bernasconi (Switzerland); Mr Philippe Sands QC (United Kingdom)

Paralympic Powerlifting
Doping (18-Nor-Oxandrolon; stanozolol-N-glucuronide)
Burden of proof in case of anti-doping violations
Prerequisites for voidance of Adverse Analytical Finding
DNA testing in anti-doping matters
Sanctions under Article 10.6 of the ADC

1. **According to the Anti-Doping Code of the International Paralympic Committee (ADC) the IPC must prove an Anti-Doping Rule Violation to the comfortable satisfaction of the panel; thereafter it is for the athlete to establish on the balance of probabilities that a departure from the International Standard for Testing (IST) occurred which could reasonably have caused the Adverse Analytical Finding (AAF). Finally, if the athlete succeeds in establishing such a probable causal link between the departure and the Adverse Analytical Finding, then the IPC must prove that the departure did not cause the Adverse Analytical Finding. A *per se* rule that non-compliance with the IST automatically invalidates the test results does not exist.**

2. **In case an athlete alleges one or several departures from the IST, the panel adjudicating the case has to review each of the allegations made, in order to determine whether indeed, the alleged violations of the IST occurred, and whether additionally, they could have reasonably caused the AAF. In case only the first prerequisite (establishment of departure) is fulfilled but no probable causal link between the departure and the AAF is established by the athlete then the AAF has to be upheld.**

3. **DNA testing is not a usual procedure in anti-doping matters and is not provided for by the applicable regulations. Hence DNA testing would only have to be considered in case of particular factual elements that would justify such analysis, if for example the identity of the A and B samples was not clear throughout the anti-doping process.**

4. **The wording of Article 10.6 of the ADC does not require the imposition of a four-year sanction in all cases of aggravating circumstances, but rather leaves the panel a considerable margin of appreciation.**

I. FACTS

A. THE PARTIES

1. Mr Iago Gorgodze ("Mr Gorgodze" or the "Appellant") is a Georgian paralympic powerlifter.

2. The International Paralympic Committee ("IPC" or the "Respondent") is the international governing body of the Paralympic movement and the international federation of, among others, IPC powerlifting. Its registered office is in Bonn, Germany.

B. FACTS OF THE CASE AND ORIGIN OF THE DISPUTE

a) The anti-doping test of 18 September 2014

3. On 18 September 2014, Mr Gorgodze was tested out-of-competition at his home in Tbilisi, Georgia.

4. Given that the parties are in dispute regarding certain aspects of the test carried out on 18 September 2014, the Panel shall revert to the contested details of the test in the "Legal Discussion" part of this award. The facts that are not contested regarding this test are, in substance, the following.

5. Mr Gorgodze was visited at his home on 18 September 2014 by Mr Teimuraz Ukleba, Doping Control Officer ("DCO") of the Georgian Anti-Doping Agency ("GADA"), acting on behalf of the IPC as authorized sample collection authority.

6. The Appellant agreed to provide a urine sample into a collection vessel and this was carried out in his living room, around the dining table.

7. The urine was then poured into two bottles and the Appellant closed the bottles himself.

8. After that, the Appellant signed a Doping Control Form ("DCF"). This Doping Control Form is called "DCF1" for the purposes of this award.

9. The Appellant did not add any comments on the DCF1 and the following text was above his first signature: *"I hereby acknowledge that I have received and read this notice, including the athlete rights and responsibilities text on the overleaf of copy 1, and I consent to provide sample(s) as requested (…)"*. The Appellant's second signature on the DCF1 was next to a box that was ticked to indicate the Athlete's refusal of the use of his sample for anti-doping research purposes. The Appellant's third signature on the DCF1 was under the statement: *"I declare that the information I have given on this document is correct. I declare that, subject to comments made in section 4, sample collection was conducted in accordance with the relevant procedures for sample collection.* (…)*"*. The DCF1 also bore the signature of a "DCO/Chaperone", whose name was stated as "M. Kavelashvili". Mr Ukleba also signed the DCF1 partly under the following text: *"I certify that sample collection was conducted in accordance with the relevant procedures" - "Urine sample witness"*, but also under the text: *"Doping Control Officer"*.

10. The Test Mission Code ("TMC") on the DCF1 was corrected and numbers were written over, making it difficult to read. The TMC on the DCF1 appears as 264161969. Furthermore, the DCF1 clearly bears the urine sample code number ("SCN") 2915651.

11. The urine sample was sent by Mr Ukleba (on behalf of GADA) to the Institute of Biochemistry of the German Sport University in Cologne, Germany, which is a World Anti-Doping Agency ("WADA") accredited laboratory ("the Laboratory"). He remitted the sample to a courier, the company Georgian Express, as shown by the Chain of Custody Form ("CCF") signed by Mr Ukleba and the receptionist of that company, Ms Mari Katsitadze. The CCF bears the SCN 2915651 and the TMC 264161969.

12. The next day, 19 September 2014, the DCO, Mr Ukleba, returned to Mr Gorgodze's home. He asked Mr Gorgodze to sign a new form. This form, called "DCF2" for the purposes of this award, contains the same information as DCF1 (and is dated 18 September 2014) and the TMC is now clearly legible as being 264161969.

b) The results of the anti-doping test

13. On 15 October 2014, the Laboratory reported an Adverse Analytical Finding ("AAF") for two metabolites of steroids: oxandrolone metabolite 18-Nor-Oxandrolon and stanozolol metabolite stanozolol-N-glucuronide. These are both on the Prohibited List of the World Anti-Doping Code 2014 ("WADC").

14. The Laboratory issued a Test Report under the Anti-Doping Administration and Management System ("ADAMS"). The Test Report bore the SCN 2915651 and the TMC M-164161969.

15. It appears from emails exchanged between GADA and the Laboratory that on 19 September 2014 GADA gave the laboratory by email a wrong TMC (M-164161969). This number was then included in the Test Report. However, the Laboratory informed the IPC, in a later email dated 26 February 2015, that the TMC was an optional field in the Test Report and in ADAMS.

16. The Laboratory Documentation Package indicates that both sample A and sample B were correctly closed and sealed in "Berlinger" bottles and that the SCN on both samples was 2915651.

17. On 16 October 2014, the IPC notified the Appellant of the AAF, via the National Paralympic Committee of Georgia ("NPC Georgia"), and suspended him provisionally. The IPC also advised the Appellant of the possible sanctions and of his right to request a B sample analysis and the laboratory documentation package.

18. The Appellant denied having committed an anti-doping violation, requested the analysis of his B sample and did not accept the provisional suspension.

19. On 30 October 2014, the Laboratory reported that the analysis of the B sample confirmed the results of the A sample analysis. The Test Report of the Laboratory bore the SCN 2915651 and the TMC M-164161969.

c) The procedure before the IPC Anti-Doping Committee

20. The IPC Anti-Doping Committee held a hearing on 27 November 2014, in order to address the AAF and the possible anti-doping rule violation committed by Mr Gorgodze. The IPC and Mr Gorgodze (together with his coach and several representatives of the NPC Georgia) attended the hearing by telephone conference.

21. During the hearing, Mr Gorgodze explained that he was well-informed about anti-doping matters. He also stated that he was satisfied with the sample collection procedure. He denied having taken a Prohibited Substance. Mr Gorgodze explained at the hearing that the sample might have been changed during transportation or at the Laboratory (but did not provide any evidence regarding these allegations) and requested a DNA analysis to confirm the identity of the sample.

22. The IPC Anti-Doping Committee submitted a recommendation to the IPC Governing Board, rejecting the request for a DNA analysis, disqualifying Mr Gorgodze from his results subsequent to 18 September 2014, imposing a 4 year period of ineligibility starting on the date of the provisional suspension (16 October 2014), as well as a financial sanction of EUR 1'500. The IPC Governing Board accepted this recommendation on 8 December 2014 ("the Decision"). The Decision was notified to Mr Gorgodze shortly after 8 December 2014.

23. The reasoning contained in the Decision shall be examined below in the "Legal Discussion" part of this award.

C. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. Mr Gorgodze filed his Statement of Appeal with the Court of Arbitration for Sport ("CAS") on 30 December 2014. Mr Gorgodze nominated Mr Aldons Vrublevskis as arbitrator.

25. On 6 January 2015, the CAS Court Office acknowledged receipt of the Statement of Appeal and invited Mr Gorgodze to pay the full Court Office fee of CHF 1'000 within 5 days. The CAS Court Office also underlined that the time limit established by Article R51 of the Code of Sports-related Arbitration (the "Code") was not suspended.

26. On 16 January 2015, the CAS Court Office invited the Appellant to send proof of the notification of the Decision and of sending the Appeal Brief if it has been sent.

27. On 20 January 2015, the Appellant filed a brief containing additional evidence and arguments. The CAS Court Office accepted this brief and considered the Statement of Appeal of 30 December 2014 as a joint Statement of Appeal and Appeal Brief. The CAS Court Office further sent the IPC a copy of the file and requested both parties to submit proof of the date when Mr Gorgodze received the Decision.

28. The IPC answered on 10 February 2015, explaining that it had not notified the Decision personally to Mr Gorgodze, but to the NPC Georgia, on 8 December 2014.

29. In a letter dated 13 February 2015, the CAS Court Office accepted to initiate the arbitration procedure and invited the Respondent to file its statement of defence within twenty days and to nominate an arbitrator within ten days.

30. On 17 February 2015, the Respondent appointed Mr Michele Bernasconi, but added that it would be prepared to submit the case to a single arbitrator to be nominated by the President of the CAS Appeals Arbitration Division.

31. On 24 February 2015, the Appellant's newly retained counsel disagreed with this suggestion and requested a temporary two-week suspension of the procedure to receive and analyze the file. The Appellant added, on 26 February 2015, that he alternatively requested leave to amend the Appeal Brief. In addition, the Appellant nominated Mr Philippe Sands instead of Mr Vrublevskis as arbitrator.

32. In a letter of the CAS Court Office dated 27 February 2015, the Respondent was asked to comment on the Appellant's requests and both parties were invited to express their position on a possible second round of written submissions.

33. The Appellant reiterated that he wished to submit an amended Appeal Brief and/or to file additional written submissions.

34. The Respondent filed its Statement of Defence on 2 March 2015 and added that it did not object to the Appellant's procedural requests.

35. On 4 March 2015, the CAS Court Office allowed the Appellant to amend his brief or to file a new brief and the Respondent to file an additional brief thereafter. The CAS Court Office also took note of the fact that the Appellant withdrew his request for suspension of the procedure.

36. The Appellant filed his Amended Appeal Brief on 26 March 2015. The Respondent was invited to submit its second brief within 15 days.

37. The Arbitration Panel constituted by Messrs Conny Jörneklint (President), Philippe Sands and Michele Bernasconi (Arbitrators) was duly appointed and its constitution was notified to the parties on 8 April 2015.

38. On 21 April 2015, the parties were invited to express their preference for a hearing to be held or for the case to be decided on the basis of the written submissions. The IPC replied that it preferred the case to be decided on the basis of the parties' submissions, but that it would be available for a hearing if the Panel decided that it was more suitable. As to the Appellant, he requested to hold a hearing.

39. On 29 April 2015, the CAS Court Office informed the parties that a hearing would be held in Lausanne, Switzerland, on 26 June 2015, after the parties confirmed their availability.

40. After having been granted two extensions of the time limit by the CAS Court Office, the Respondent filed its Second Defence Brief on 18 May 2015.

41. As new evidence was brought forward by the Respondent, and in order to give the Appellant a possibility to comment on those, the Appellant was granted a 10 day time limit to file a Reply limited to the new elements. Alternatively, the Appellant was granted a 5 day time limit to file procedural requests (for instance related to the length of the time limit to reply or the scope of that submission).

42. On 1 June 2015, within the extended time limit to do so, the Appellant renounced submitting any procedural requests and informed the CAS Court Office of the names of the persons who would attend the hearing.

43. The Appellant filed his Reply on 5 June 2015, after having received an extension of the relevant time limit.

44. On 17 June 2015, the parties were informed of the appointment of Ms Nora Krausz as ad hoc clerk.

45. The parties received the Procedural Order on 22 June 2015. They duly signed and returned a copy thereof within the set time limit.

46. The hearing took place in Lausanne on 26 June 2015. The parties were represented by the following persons: Mr George ("Gorsha") Sur and Ms Jennifer Yuen for the Appellant and Ms Elisabeth Riley for the Respondent.

47. Mr Gorgodze was heard by the Panel via video-conferencing and attended the rest of the hearing via telephone conferencing.

48. The following witnesses were heard through video-conferencing: Mr Zurab Tsikishvili (Mr Gorgodze's coach), Ms Mari Katsitadze (employee of the courier company Georgian Express), Mr Teimuraz Ukleba (DCO) and Mr M. Kavelashvili (chaperone working for the GADA).

49. The parties confirmed having no objection regarding the composition of the Panel. The parties had the opportunity to present their case, comment on the evidence, submit their arguments and answer the questions posed by the Panel. The parties stated that they did not have any objection as to the respect of their right to be heard, their right to be treated equally or the conduct of the proceedings.

50. During the hearing, the Panel suggested that the case might be settled through an agreement between the parties. Following the outlining of arguments, the hearing was suspended and the parties discussed a settlement. They informed the Panel that they had agreed to conduct additional evidentiary measures through a DNA test paid by the Athlete and, if the test showed that the samples belonged to Mr Gorgodze, they agreed on a possible sanction. The Panel took note of the parties' agreement and suspended the proceedings until 27 October 2015, with the parties' consent. If, by that date, the parties did not reach a final settlement, the Panel indicated that the procedure would be resumed.

51. The suspension and its modalities were confirmed in a letter of the CAS Court Office dated 26 June 2015.

52. The CAS Appeals Arbitration Division extended the time limit to render the award until 18 November 2015 and the parties were informed accordingly on 1 July 2015.

53. On 8 September 2015, the Respondent informed the Panel that the parties could not agree on the modalities of the DNA test. For this reason, the IPC asked the Panel to reconvene the proceedings for closing arguments (for cost reasons) by telephone conference.

54. In a letter dated 11 September 2015, the Appellant supported the request for continuation of the proceedings, through telephone or video conferencing. The Appellant also noted that the parties could not reach an agreement regarding the DNA test. He added that the Respondent's presentation of the parties' initial arrangement was not correct, in his opinion, and that the settlement discussions should have remained confidential.

55. The CAS Court Office informed the parties on 23 September 2015 that the proceedings were resumed and that the Panel wished to receive written Closing Submissions, rather than holding a hearing through video or telephone conference.

56. The Appellant agreed with the suggested manner of proceeding, while the Respondent remained silent. Thus, on 1 October 2015, the CAS Court Office invited the parties to file their written Closing Submissions within two weeks.

57. On 26 October 2015, *i.e.* on the last day of the extended time limit set for the Closing Submissions, the Respondent requested the CAS Court Office for a copy of a previous CAS award that might be relevant in the present proceedings. On that same day, the award was sent to both parties.

58. The Appellant objected on 27 October 2015 to the new evidence (the above mentioned CAS award) submitted by the Respondent.

59. The Appellant answered in a letter dated 11 November 2015 and the Panel decided, on 13 November 2015, to allow the above mentioned CAS award into the file and to give the Appellant a time limit of 7 days to comment on that document.

60. On 11 November 2015, the parties were informed that the time limit to render the award had been extended until 30 December 2015.

61. On 20 November 2015, the Appellant filed his comments on the CAS award filed by the Respondent on 26 October 2015.

D. THE PARTIES' REQUEST FOR RELIEF

62. In his Amended Appeal Brief, Mr Gorgodze requested the following relief:

> *"The Appellant hereby respectfully requests the Panel to order that:*
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> *a) The Appellant's adverse analytical finding is voided;*

b) The Decision of the International Paralympic Committee to disqualify the Appellant and to forfeit all medals, points and prizes in competition subsequent to the sample collection of 18 September 2014 is vacated;

c) A DNA analysis of the samples attributed to the Appellant by an independent expert in an independent laboratory if the Appellant's adverse analytical finding is not overturned.

d) If the DNA analysis does not absolve the Appellant, his ineligibility period be reduced to two-years;

e) The financial sanction of EUR 1'500,-- imposed by the International Paralympic Committee against the Appellant is set aside;

f) The Appellant be awarded a substantial contribution toward his costs and attorney's fees incurred in filing this Appeal; and

g) The Appellant is provided with such other relief that the Panel deems just, equitable, and lawful".

63. The Respondent's Statement of Defence and Second Defence Brief oppose the appeal in general. Its Closing Submissions contain the following prayers for relief:

"For the reasons set out above, the IPC respectfully requests that the CAS Panel dismiss Mr Gorgodze's appeal and:

a) confirm Mr Gorgodze's commission of an anti-doping violation;

b) confirm the disqualification of all results obtained by Mr Gorgodze subsequent to sample collection, along with all resulting consequences including forfeiture of any medals, points and prizes;

c) impose an appropriate period of ineligibility pursuant to ADC Articles 10.2 and 10.6; and

d) confirm the fine of EUR 1'500,--".

II. LEGAL DISCUSSION

A. JURISDICTION OF THE CAS

64. As the CAS is an arbitral tribunal with seat in Switzerland, and as neither party has its domicile or habitual residence in Switzerland, pursuant to Article 176 of the Swiss Private International Law Act ("PILA"), chapter 12 of this act (Articles 176 to 194 PILA) is applicable to the present arbitration[1].

65. According to Article 186 PILA, the arbitral tribunal shall rule on its own jurisdiction. Therefore, the Panel is competent to rule on its own jurisdiction.

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1 CAS 2005/A/983 & 984 §61; CAS 2006/A/1180 §7.1.

66. Article R47 (first paragraph) of the Code provides the following: *"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body"*.

67. The present dispute is governed by the IPC Anti-Doping Code 2011 ("ADC"). According to Article 13.2 of the ADC, decisions regarding Anti-Doping Rule Violations and Consequences thereof are capable of appeal to CAS.

68. In the case under scrutiny, the Decision, which found an Anti-Doping Rule Violation and which imposed consequences on Mr Gorgodze (disqualification of results, period of 4 years of ineligibility and fine of EUR 1'500), is therefore capable of appeal before the CAS. In addition, none of the parties raised any objection regarding the jurisdiction of the CAS.

69. In conclusion, the Panel finds that it has jurisdiction to rule upon the present dispute.

B. ADMISSIBILITY OF THE APPEAL

70. Article 13.5 of the ADC provides that appeals to CAS shall be filed within a time limit of 21 days from the date of receipt of the decision by the appealing party.

71. In the case at hand, Mr Gorgodze lodged his Statement of Appeal on 30 December 2014. Despite the fact that the parties did not establish the precise date at which the Decision was notified to the Appellant, the IPC did not contest that the appeal was filed within the 21-day time limit. Against this uncontested factual background, and lacking any other information, the Panel concludes that the appeal was filed in time.

72. The Statement of Appeal further respects the formal conditions set out by Article R48 of the Code.

73. Accordingly there are no grounds on which it could be contended that the appeal is inadmissible. The Panel concludes that the appeal is admissible.

C. APPLICABLE LAW

74. According to Article R58 of the Code, *"the Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.

75. In the case under scrutiny, the Panel shall decide the appeal according to the applicable regulations chosen by the parties, *i.e.* the ADC, which refers to the WADC, the 2014 version of this latter being applicable in the present case.

D. MERITS OF THE CASE

76. Given the parties' submissions, the Panel shall answer the following main questions: a) Did Mr Gorgodze commit a violation of the ADC? b) If Mr Gorgodze violated the ADC, which consequences should be drawn?

a) Did Mr Gorgodze commit a violation of the ADC?

77. According to Article 4.1 of the ADC, the products which are banned under the ADC are those listed on the WADC Prohibited List. It is not contested by the parties that the products oxandrolone metabolite 18-Nor-Oxandrolon and stanozolol metabolite stanozolol-N-glucuronide are on the WADC 2014 Prohibited List. The parties in fact agree that these products trigger an AAF and consequently an Anti-Doping Rule Violation within the meaning of Article 2.1 of the ADC.

78. The parties did not discuss a possible Therapeutic Use Exemption within the meaning of 4.4 of the ADC, nor did they raise any issues regarding the procedure followed by the IPC after the receipt of the AAF or during the hearing before the IPC Anti-Doping Committee. There are therefore no reasons for the Panel to re-examine these issues.

79. The issue in the present proceedings is whether the sample that returned the AAF indeed belonged to Mr Gorgodze. The Appellant denies this and puts forward a series of possible violations of the International Standard for Testing ("IST") within the meaning of Article 5.3 of the ADC.

80. According to Mr Gorgodze, these violations should cause the automatic voidance of the AAF, based on a strict compliance rule that he identifies in the CAS case law. For the IPC, the correct legal test to be applied is that the IPC must prove to the comfortable satisfaction of the Panel that the Appellant committed an anti-doping rule violation and a further strict compliance rule should not be applied. The Panel shall examine this argument under *let. i)*.

81. Alternatively, in the Appellant's opinion, the violations of the IST could reasonably have led to the AAF and the IPC did not prove that they did not cause the AAF. The IPC, on the contrary, considers that the discrepancies in the conduct of the test on 18 September 2014, as well as those related to the DCFs and the TMC, could not have reasonably caused the AAF. The Panel shall turn to this issue under *let. ii)*.

82. Finally, if the AAF is not voided, a DNA test is justified, in the opinion of the Appellant, while the Respondent is of the view that the ADC or the IPC's other rules do not include a right to DNA analysis and the facts of the case do not justify such a test (cf. below *let. iii)*).

83. The Panel notes at the outset that the IPC Anti-Doping Committee did not examine the violations of the IST raised by the Appellant, because they were not put forward during the first instance proceedings. Indeed, before that body, the Appellant referred only in general terms to a possible mix up of his sample during transportation or at the Laboratory, without making any precise allegations or bringing any evidence. At the same time, he confirmed that he was satisfied

with the testing procedure. The IPC Anti-Doping Committee consequently held that the athlete accepted the sample collection procedure and did not see any reason for any extraordinary DNA analysis to confirm the otherwise accepted identity of the sample. The Decision therefore held that the commission of an Anti-Doping Rule Violation has been proven.

i) Should a strict compliance test lead to the voidance of the AAF?

84. According to Article 3.2 of the ADC:

> *"The IPC shall have the burden of establishing that an Anti-Doping Rule Violation has occurred. The standard of proof shall be whether the IPC has established an Anti- Doping Rule Violation to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation, which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these rules place the burden of proof upon the Athlete or other Person alleged to have committed an Anti-Doping Rule Violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability except as provided in Articles 10.4 and 10.6 where the Athlete must satisfy a higher burden of proof"*[2].

85. Article 3.2.1 of the ADC concerns departures from the International Standard for Laboratories ("ISL") set out at Article 6.4 of the ADC. Then, Article 3.2.2 of the ADC concerns violations of other standards or rules and sets out:

> *"Departures from any other International Standard or other Anti-Doping rule or policy which did not cause an Adverse Analytical Finding or other Anti-Doping Rule Violation shall not invalidate such Results. If the Athlete or other Person establishes that a departure from the International Standard or other Anti- Doping rule or policy which could reasonably have caused the Adverse Analytical Finding or other Anti-Doping Rule Violation occurred, then the IPC shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the Anti-Doping Rule Violation"*[3].

86. Thus, the ADC provides that the IPC must prove the Anti-Doping Rule Violation to the comfortable satisfaction of the Panel, then Mr Gorgodze must establish on the balance of probabilities that a departure from the IST, which he claims, could reasonably have caused the AAF. Finally, if Mr Gorgodze can establish such a probable causal link between the departure and the AAF, then the IPC must prove that the departure did not cause the AAF.

87. Mr Gorgodze argues that the case law contains an additional strict compliance test, which would be the following: the AAF must be automatically voided in case of breaches of mandatory IST safeguards, of willful and manifest breaches of the IST by testing authorities, as well as of departures from the IST that undermine the fairness of the testing and adjudication process.

88. According to the IPC, this strict compliance test was rejected by recent case law.

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2 Emphasis added.
3 Emphasis added.

89. In the Panel's view, it must first be underlined that Article 3.2 of the ADC is clear and contains a clear rule for the burden of proof.

90. Furthermore, the Panel notes that, in the CAS award rendered on 10 April 2014 in the case CAS 2014/A/3487, the issue of a strict compliance rule was carefully examined.

In that case, the Panel accepted the need for strict compliance with international standards (*§145 ff*) and took note of the previous case law considering that certain standards are so fundamental that any departure from them will result in the automatic invalidation of the test, such as the right to assist to the analysis of the B sample (*§148 ff*). However, the Panel did not decide the case on the basis of these two arguments (*§152*).

Indeed, the Panel then went on to consider that, according to Rule 33.3(b) of the IAAF ADR, that was based on Rule 3.2.1 of the WADC 2009, the burden of proof shifted *"whenever an athlete could establish that it would be reasonable to conclude that the IST departure could have caused the AAF. In other words, the athlete must establish facts from which a reviewing panel could rationally infer a possible causative link between the IST departure and the presence of a prohibited substance in the athlete's sample. For these purposes, the suggested causative link must be more than merely hypothetical, but need not be likely, as long as it is plausible"* (*§155*).

The Panel added that this shift in the burden of proof strikes an *"appropriate balance"* between the rights of athletes to the respect of the IST and the legitimate interest in preventing athletes from escaping punishment for doping in case of inconsequential or minor technical infractions of the IST (*§156*). The burden of proof must shift onto the anti-doping organization *"whenever a departure from an IST gives rise to a material – as opposed to merely theoretical – possibility of sample contamination"* (*§157*).

After having decided that the athlete has succeeded in shifting the burden of proof onto the anti-doping authority, the Panel in CAS 2014/A/3487 examined whether it was comfortably satisfied that the athlete committed the charged anti-doping violation. In that context, the Panel stressed that particularly cogent and persuasive evidence would be necessary for the Panel to be satisfied that the AAF was not caused by the departure from the IST (*§180*). In addition, such evidence would have to be even more convincing in a case where, such as the one examined by that Panel, the anti-doping body has engaged in a *"knowing, systematic and persistent failure"* to comply with the IST. The anti-doping body's ability to hold an athlete to a strict standard of accountability is necessarily attenuated where it manifestly and willfully fails to uphold its side of the bargain, particularly so where the failure creates a possibility of sample contamination and unreliable testing results. In such cases, the IST departure strikes at the very heart and purpose of the anti-doping regime (*§181*).

91. Therefore, in the case CAS 2014/A/3487, it was only when the Panel examined the evidence that must be brought by the anti-doping body in order to convince the Panel of the anti-doping violation that it referred to failures that strike to the heart of the anti-doping system. Thus, in that award, the Panel did not establish an independent strict compliance rule applicable to anti-doping organizations, but underlined the importance of a higher standard of proof in cases

where the burden of proof had shifted to the anti-doping body and where systematic violations of the IST had occurred.

92. The CAS also held recently in another decision (award of 8 April 2015 in the case CAS 2014/A/3639, at §68) that certain international standards are so fundamental and central to ensuring the integrity of the results that certain departures therefrom could result in the automatic invalidation of the test results. These departures make it impossible for the arbitral panel to be comfortably satisfied that a doping violation occurred. However, in the case CAS 2014/A/3639, the Sole Arbitrator then examined each of the departures from the IST and whether they had an impact on the reliability or the integrity of the sample and rejected such a possibility.

93. In subsequent cases (*e.g.* Decision of 16 June 2015 of the Board Judicial Committee in the case Ralepelle v/ World Rugby, §90-92; CAS award of 10 August 2015 in the case CAS 2015/A/3925, §116), the CAS and other dispute resolution bodies confirmed that Article 3.2 of the WADC (and the regulations deriving from that provision) does not impose absolute standards from which *any* deviation would result in the annulment of the process or of proceedings. Rather, Article 3.2 of the WADC strikes the balance between strict liability and the rights of athletes. This approach is confirmed in particular when the text of the current provision is compared to the previous version of Article 3.2 of the WADC (2003 version), which provided: *"The Athlete may rebut this presumption by establishing that a departure from the International Standard occurred"*, without requiring a correlation between that departure and the AAF. A *per se* rule that non-compliance with the IST automatically invalidates the sample's test results is rejected, because it would invalidate a positive test result even if the possibility of contamination is factually implausible and because it would contradict the express language of Article 3.2 of the WADC (and that of its implementing regulations).

94. The Appellant himself admits that, in the case CAS/2015/A/3925, the CAS declined to establish a *per se* rule of strict compliance, but claims that the violations of the IST were so serious that they warrant an automatic voidance of the AAF.

95. After having given careful thought to the above case law, the Panel considers that the contents of Article 3.2.2 of the ADC are clear and sufficient to decide the present case, without having to decide on the existence of an additional strict compliance test. Moreover, as it will appear below from the analysis of the alleged departures, they are not as serious as to justify the application of a possible strict compliance rule. The Panel shall therefore examine below whether the Appellant introduced any evidence on the basis of which a reviewing panel could rationally infer a possible (plausible) causative link between the alleged IST departures and the presence of a Prohibited Substance in Mr Gorgodze's sample.

96. In conclusion, under the present circumstances, the Panel shall not automatically invalidate the AAF.

ii) Did the Appellant prove a departure from the IST that could reasonably have caused the AAF and if yes, did the IPC prove that the departure did not cause the AAF?

97. The Panel turns to examine whether the Appellant established a departure from the IST that could have reasonably (*i.e.* plausibly) caused the AAF. If that is the case, the Panel shall then analyze whether the IPC established that such departure did not cause the AAF.

98. In general, the IPC criticizes the fact that the Appellant did not raise the alleged departures from the IST before the present proceedings. The Respondent relies on case CAS 2003/A/493 (§5.5), where the Panel held that the athlete's *"plain signature of the doping control records expresses his approval of the proceedings and prevents him – short of compelling evidence of manipulation of the records or fraud or an similar facts - from raising any such issue at a later stage"*. However, the IPC did not claim in the present proceedings that the Appellant would have forfeited completely his right to raise departures from the IST. This all the more less, as the IPC itself admits certain departures from those procedures. Therefore, although the rule of good faith indeed calls for the athlete to raise his objections in a timely manner, the Panel shall not consider Mr Gorgodze's objections as belated given the specificities of the present case.

99. The Appellant alleges a number of departures. First:

- *The Appellant was deprived of the fundamental right to be notified and informed*

100. The Appellant puts forward a violation of Article 5.3.7 of the IST, according to which the athlete shall be the first to be notified that he/she has been selected for sample collection. Mr Gorgodze explains that it was not him, but his coach, who was the first to be informed of the 18 September 2014 test.

101. The IPC responds that this assertion is contradicted by Mr Gorgodze's earlier evidence to the Panel, where he stated that it was the DCO who notified him. In addition, there is no suggestion that such advance notice could have caused the AAF.

102. The Appellant also alleges a violation of Article 7.3.2 of the IST (which provides that the DCO shall ensure that the athlete has been informed of his rights and responsibilities) in conjunction with Article 5.4.1 of the IST (which gives the right to representation, to additional information about the sample collection process and to request modifications for athletes with disabilities). According to the Appellant, this violation is based on the fact that the DCO did not inform him of his rights and responsibilities before the test on 18 September 2014, that he had not been informed of his rights before that date, that he could not understand the reverse side of the DCF listing these rights and that his signature on the DCF cannot cure the violation of these provisions.

103. In the IPC's view, Mr Gorgodze did not prove a violation of these provisions, because he signed the notification section acknowledging that he has received and read the rights and responsibilities set out on the back of the DCF. The fact that he does not speak English is counterbalanced by the fact that the Appellant is an experienced athlete who has been tested

previously and by the fact that he could have asked for a translation if he wished so. The IPC adds that such a departure could not possibly have caused the AAF.

104. In the Panel's view, the evidence on record shows that Mr Gorgodze's coach was also informed about the testing but it is not established whether it was before or after the Appellant was informed. Regarding the lack of information, the evidence on file is not conclusive, but the Panel notes that the evidence before it shows that Mr Gorgodze had been tested previously several times by the same DCO and that Mr Gorgodze acknowledged, by signing the DCF, that he had been informed of his rights and responsibilities. In any event, a possible notice sent to his coach or possible lack of information regarding the rights and responsibilities could not have caused the AAF, and Mr Gorgodze does not so suggest.

105. The Panel shall conclude that the Appellant did not prove that a possible violation of these provisions of the IST could have caused the AAF.

- *The test was conducted at the Appellant's dining table and Mr Gorgodze was not asked to wash his hands*

106. According to the Appellant, Article D.4.7 of Annex D of the IST was violated, because the DCO did not direct him to wash his hands prior to the provision of the sample. In addition, the Appellant puts forward that the DCO and him did not proceed to an area of privacy to collect the sample, in violation of Article D.4.8 of Annex D of the IST. Referring to the case CAS 2015/A/3925, the Appellant also explains that his collection vessel was not covered by a plastic adhesive film and that a contamination could have happened for this reason.

107. In the IPC's opinion, it is not disputed that the sample collection was made at Mr Gorgodze's dining table. However, aside from the Appellant, the DCO and the chaperone, the IPC states that nobody else was present in the living room at that moment. Therefore, that room can be considered as an area of privacy. The IPC adds that although Mr Gorgodze was not asked to wash his hands, this does not explain the presence of the metabolites of two different anabolic steroids.

108. In the Panel's view, Article D.4.7, which provides that where practicable the DCO should ensure that the athlete washes his hands, was violated in this case. Indeed, in Mr Gorgodze's house, it was practicable to ask the Appellant to wash his hands and the evidence on file clearly indicates that this was not the case. However, Mr Gorgodze has not established how this violation of the IST could have reasonably caused the AAF, or any basis upon which his own hands could have contaminated the sample, even more if considering that the Appellant was at his home. Finally, the lack of adhesive film is irrelevant, because the parties agree that the urine sample was immediately poured from the collection vessel to the A and B bottles and was not stocked in the collection vessel. For this reason, the collection vessel did not have to be protected by a plastic adhesive film.

109. As to Article D.4.8, which provides that the DCO and the athlete shall proceed to an area of privacy for the sample collection, its meaning is reduced in a case such as this, where the athlete is tested in his own home. In this case, Mr Gorgodze's living room can be considered as an "area of privacy", especially as his family was not present in the room.

110. The Panel concludes that the violation of Article D.4.7 of Annex D of the IST could not have reasonably caused the AAF and the Panel holds that Article D.4.8 of that same text was not violated.

- *The Appellant was not given the choice of sample collection equipment*

111. Mr Gorgodze explains that he was not given the choice of sample collection equipment, in violation of Article D.4.2 of Annex D of the IST, which imposes a duty onto the DCO to "ensure that the Athlete is offered a choice of appropriate equipment for collecting the Sample".

112. The IPC replies that this was on the contrary the case, based on the DCO's witness statement, who stated that he had brought several collection kits with him to Mr Gorgodze's house. The IPC adds that the Appellant did not meet his burden of showing a departure that could reasonably have caused the AAF.

113. The Panel considers that the evidence on file regarding this issue is contradictory, with Mr Gorgodze stating in his second witness statement that he was not allowed the choice of a kit, while in his first witness statement he did not declare this, and with Mr Ukleba stating the contrary. During the hearing, Mr Gorgodze admitted that the collection kit was covered in plastic. The other witnesses did not testify regarding this issue.

114. However, the Panel notes that Mr Gorgodze has not shown how this possible violation of Article D.4.2 of Annex D of the IST, even if it occurred, could have reasonably caused the AAF.

115. Therefore, the Panel shall also reject this argument.

- *The DCO did not check if the A and B bottles had been properly sealed*

116. The Appellant explains that Article D.4.16 of Annex D of the IST was violated, because the DCO did not check, in full view of the athlete, that the bottles had been properly sealed by the athlete. He adds that the fact that in the case CAS 2015/A/3925, the collection vessel was closed and opened twice, indicated that this could have been the case with Mr Gorgodze's A and B bottles.

117. The IPC considers that this assertion was strongly denied by the DCO, who explained that he proceeded in his usual manner for checking the seals. Also, in the IPC's opinion, Mr Gorgodze did not meet his burden of proof.

118. The Panel holds that Article D.4.16 was at least partially respected, because (as the parties stated) the Appellant sealed the bottles himself. Mr Gorgodze testified during the hearing that, at the end of the sample collection, he closed the lids strongly and did not notice any problems.

119. In addition, the Laboratory Documentation Package of the Cologne Lab shows that both the A sample and the B sample were in correctly closed bottles, with intact seals.

120. Further, the Appellant did not prove that this possible violation of the IST could have reasonably caused the AAF. His allegation regarding the similarity between the case CAS 2015/A/3925 and the present case are irrelevant, because in that case, it was the collection container, and not the bottles, that was closed and opened.

121. Accordingly, the Panel rejects this argument.

- *The DCO did not give the Appellant the option to require that residual urine be discarded in his full view*

122. According to the Appellant, he should have been given the option to request that any residual urine not sent for analysis be discarded in his full view, based on Article D.4.18 of Annex D of the IST.

123. The IPC puts forward that, whatever happened to Mr Gorgodze's residual urine, it could not possibly have caused the AAF in the sealed A and B samples.

124. The Panel shares this later point of view, as the Appellant did not indicate how a possible violation of Article D.4.18 of Annex D of the IST could have caused the AAF. For this reason, this argument is rejected.

- *The rules regarding documentation were violated*

125. The Appellant puts forward several violations of the IST and the ADC regarding the documentation related to the 18 September 2014 test:

a) the existence of the three DCFs;

b) the fact that DCF1 contained false information regarding the presence of the chaperone;

c) the destruction of the original session documentation (DCF1 and DCF2);

d) the forgery of the chaperone's signature on DCF2 and DCF3;

e) the TMC on DCF1 was not clear and the TMC on the Laboratory Documentation Package was not identical to the TMC on DCF2 and DCF3;

f) the IPC and the GADA did not disclose the information relating to the above discrepancies to the IPC Anti-Doping Committee during the proceedings before that body;

g) the transportation did not ensure the integrity, identity and security of documentation and samples and the Chain of Custody form was not signed by the courier.

126. As to the IPC, it accepts that there was a departure from the rules regarding the existence of the three DCFs, the fact that the originals of DCF1 and DCF2 were destroyed and not sent to the IPC, the fact that DCF2 and DCF3 were not signed at the end of the sample collection

session, as well as the different TMCs. However, the IPC puts forward that these breaches of the IST could not reasonably have caused the AAF. Furthermore, the IPC affirms that the chaperone was present during the testing and that the courier duly signed the Chain of Custody form. Finally, the IPC adds that it relies on national anti-doping agencies responsible for the recruitment, training and supervision of the DCOs, who in turn carry out the day-to-day duties of anti-doping. Based on Article 15.2 of the ADC, the IPC recognizes the testing of any signatory of the WADC (which the GADA is) and the IPC cannot be held responsible for the *"extremely poor administration and judgment"* exercised by the DCO (employed by GADA).

127. Article 8.3.2 of the IST provides that *"the DCO shall develop a system to ensure that the documentation for each Sample is completed and securely handled"*.

128. The Panel notes that this provision was violated, as agreed by both parties, because the DCO made an error regarding the TMC on DCF1 and then replaced DCF1 by DCF2 and DCF3. The reasons put forward by the DCO (that he allegedly poured coffee on DCF1 and/or DCF2) are not sufficiently established, but the Panel notes that it is established on the basis of the evidence that three different forms existed.

129. However, the only difference between the three DCFs is the TMC, which was corrected ("over-written") on DCF1. If examined carefully, the TMC on that form is nevertheless identical to that on DCF2 and DCF3.

130. Furthermore, the Appellant did not establish how the existence of the three DCFs could have reasonably caused the AAF. Indeed, all other information, and especially the SCN, is identical on all DCFs. In addition, the SCN on the three DCFs is identical to the SCN on the Laboratory Documentation Package and to the SCN on the Test Reports regarding both the A and B samples, sent to the Appellant.

131. Therefore, the Panel holds that in the present circumstances the existence of DCF2 and DCF3 could not reasonably have caused the AAF, because the SCN is identical on all documents. This violation of the IST shall therefore not lead to a reversal of the burden of proof.

132. Article 9.3.4 of the IST stipulates: *"the DCO shall send all relevant Sample Collection Session documentation to the ADO* (Anti-Doping Organization) *as soon as practicable after the completion of the Sample Collection Session"*. In addition, Article 9.3.6 provides that the IPC shall store the documentation during 8 years at least.

133. In the present case, on the one hand, the Panel notes that the DCO did not send the originals of DCF1 and DCF2 to the IPC and only sent the original of the DCF3 approximately one month after the testing to the IPC. Therefore, the DCO failed to comply with the above provisions. By way of consequence, the IPC cannot store the documentation for 8 years.

134. On the other hand, the DCO immediately sent the relevant forms to the IPC by email, which in turn sent them to the Laboratory. In addition, as he stated during the hearing, the Appellant retained copies of the DCF1 (and possibly also the DCF2). Mr Gorgodze does not allege any

particular facts that would indicate that the absence of the original forms could plausibly have caused the AAF.

135. Under these conditions, the Panel considers that again this departure from the IST, although it is regrettable, could not reasonably have caused the AAF.

136. Regarding the presence and signature of the chaperone on 18 September 2014, the evidence on file is not consistent. The Appellant states that he did not meet Mr Kavelashvili, while this latter testified to the contrary. In addition, Mr Ukleba also testified the fact that he was accompanied by Mr Kavelashvili as a chaperone during the test. The Appellant added that the DCF concerning a previous test, carried out in February 2014, also contained Mr Kavelashvili's signature, although this person was not present at the time of testing, as was also confirmed by the Appellant's coach, Mr Tsikishvili.

137. The Panel notes that although the presence of Mr Kavelashvili on 18 September 2014 is not clearly established, this issue does not have the importance that is claimed by the Appellant.

138. First, the presence of a chaperone is a possibility, but is not mandatory according to the IST. The role of the chaperone is that of helping and/or acting in the stead of the DCO wherever necessary, as stated in the definition of that term in the IST. Under Article H.5.5 of Annex H to the IST, *"Doping Control Officers may personally perform any activities involved in the Sample Collection Session, with the exception of blood collection unless particularly qualified, or they may direct a Chaperone to perform specified activities that fall within the scope of the Chaperone's authorised duties"*.

139. Second, the signature of a chaperone on the DCF is an alternative to the signature of the DCO, because Article 7.4.5 *lit.* m) of the IST requires the *"name and signature of the witnessing DCO/Chaperone"*.

140. Mr Gorgodze does not explain why the absence of Mr Kavelashvili could reasonably have caused the AAF. For this reason, this argument shall not be taken into consideration.

141. Finally, although the DCO in the present case admitted that he had forged the signature of Mr Kavelashvili on the DCF2 and the DCF3, and despite the fact that such conduct cannot be criticized strongly enough by the Panel, the Panel is unable to find a basis on which this forgery could reasonably have caused the AAF.

142. Regarding the difference between the TMC on the three DCFs and the Laboratory Documentation Package, the Panel underlines that, if read carefully, the number on DCF1 is identical to that on DCF2 and DCF3. This number is different from the TMC on the Laboratory Documentation Package, because of an error in an email sent by the GADA to the Laboratory, supposedly to correct the TMC.

143. The Panel notes that the TMC is not part of the mandatory information to be recorded on the DCF, as provided for by Article 7.4.5 of the IST. The fact that the TMC is an optional piece of information was also confirmed by the Laboratory.

144. Therefore, given that the SCN invariably identified the Appellant's samples and that, for this reason, his samples could not have been mixed up with another person's samples, the Panel concludes that the discrepancy regarding the TMC could not have reasonably caused the AAF.

145. The Appellant asserts that the IPC should have revealed the existence of several DCFs during the proceedings before the IPC Anti-Doping Committee.

146. However, the Appellant himself was also aware of the fact that potentially several DCFs existed, because he was asked by Mr Ukleba to sign a second (and possibly a third) DCF. Mr Gorgodze did not raise this issue during the first instance proceedings and declared that he was satisfied with the testing procedure. Therefore, the IPC did not have a particular reason to explain facts that were not relevant to any contention presented to the IPC Anti-Doping Committee. Further, the Respondent itself was not fully aware of the fact that three different DCFs existed in this case. In addition, as examined above, the fact that three DCFs exist did not cause any doubt relating to the identification of the A and B samples. Finally, the IST does not contain a rule according to which the IPC would have had an obligation to explain these factual elements to the hearing body. Therefore, the IPC did not breach any obligations during the first instance proceedings.

147. Finally, the Appellant put forward several possible breaches of the transportation standards, in particular the fact that, according to him, the courier did not sign the Chain of Custody form. The Appellant added, more generally, that the transportation did not ensure the integrity of the documentation and the samples.

148. The IPC explains that the evidence on file (and in particular Ms Mari Katsitadze's testimony) confirms that the courier duly signed the form.

149. Article 9.1 lit. b and Article 9.3.1 of the IST provide that the transportation system must ensure the integrity, identity and security of the samples and documentation. In addition, Article 9.3.5 of the IST provides that the Chain of Custody must be checked by the ADO if, among others, the Sample's integrity or identity may have been compromised during transport and the ADO must consider whether the Sample should be voided.

150. According to the Panel, although the originals of DCF1 and DCF2 were not received by the IPC (as stated above), the documents were sent by email to the IPC and to the Laboratory. Further, the Panel holds that the signature on the Chain of Custody form is indeed the signature of the courier and is not the same signature as that of the chaperone, as claimed by the Appellant. Finally, the Panel underlines that the Laboratory confirmed having received intact samples, with the correct SCN (which was the same on all documents and on the sample bottles). There is no evidence or other indication on the file that the integrity, identity and security of the samples would have been compromised during transportation and that the Chain of Custody would have been broken. Therefore, the Panel considers that the Appellant did not plausibly prove any departures regarding the transportation or the Chain of Custody that could reasonably have caused the AAF.

151. As a general conclusion regarding the documentation, the Panel concludes that although some violations of the IST occurred, under the present circumstances they could not reasonably have caused the AAF. For this reason, Mr Gorgodze has not succeeded in shifting the burden of proof to the IPC and the Panel shall uphold the AAF.

152. The Panel stresses, however, that such deviations from the IST are highly regrettable. It expresses the hope that the IPC, which has readily admitted the violations, shall take all appropriate measures to avoid any such failures in the future.

iii) Should a DNA test be ordered by the Panel?

153. According to the Appellant, there is a serious doubt about the identity and the integrity of the samples, created by the violations of the IST that were put forward by the Appellant. For this reason, he considers that he has established a reasonable basis to question the lab results and this would justify a DNA test. Mr Gorgodze adds that he is willing to pay for this test.

154. The IPC explains that the ADC or the IPC's rules do not provide for a right to a DNA analysis. The Respondent adds that there is, in addition, no reasonable basis for granting this request, because the laboratory results are not in dispute, that the identity of the samples is not questionable and that a DNA test is not necessarily conclusive.

155. In the Panel's opinion, DNA testing is not a usual procedure in anti-doping matters and it is not provided for by the applicable regulations. In addition, in the present case, there are no particular factual elements that would justify such analysis, given the above considerations regarding the departures from the IST. Indeed, the identity of the A and B samples was clear throughout the process. It is therefore not necessary for the Panel to decide whether a DNA test would be conclusive in the present matter.

156. In view of the above, the Panel holds that the AAF shall be upheld and that a DNA analysis shall not be ordered. The Panel confirms the Decision, in which the IPC Anti-Doping Committee found to its comfortable satisfaction that the commission of the Anti-Doping Rule Violation has been proven. Consequently, the Panel is satisfied that Mr Gorgodze committed an anti-doping offence within the meaning of Article 2.1 of the ADC.

b) If Mr Gorgodze violated the ADC, which consequences should be drawn?

157. In the Decision, the Appellant was disqualified of all competition results including any forfeiture of any medals, points and prizes obtained in competitions subsequent the sample collection date (18 September 2014), based on Article 10.8 of the ADC. Furthermore, on the basis of Article 10.6 of the ADC, the IPC Anti-Doping Committee considered that the AAF presented two different non-specified Prohibited Substances and that this aggravating circumstance justified an ineligibility for 4 years. The Decision added that neither Article 10.4 nor Article 10.5 of the ADC applied and that a reduction of the period of ineligibility was therefore not possible.

158. According to the Appellant, the facts of the case do not amount to aggravating circumstances within the meaning of Article 10.6 of the ADC or to multiple violations under Article 10.7 of

the ADC. He adds that, even if aggravating circumstances existed, this would not be sufficient to impose directly the maximum period of ineligibility. In other words, according to the Appellant, Article 10.6 of the ADC does not automatically mandate imposing a four-year ineligibility period where an aggravating circumstance exists, but the facts of the case must provide specific grounds for that maximum sanction to be imposed. Finally, the Appellant states that the general considerations regarding IPC Powerlifting are not relevant in the present case.

159. According to the Respondent, the presence of multiple Prohibited Substances justifies the four-year period of ineligibility. The IPC adds that doping is a serious problem within powerlifting and that, for this reason, a truly deterring sanction is necessary. However, in its Closing Submissions, the IPC stated that two cases where a three-year period of ineligibility was imposed were factually close to the present case. Thus, the IPC recognized that in similar cases, anti-doping bodies have adopted less serious sanctions.

160. Article 10.6 of the ADC provides:

161. *"If the IPC establishes in an individual case involving an Anti-Doping Rule Violation (…) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete (…) can prove to the comfortable satisfaction of the hearing body that he or she did not knowingly commit the Anti-Doping Rule Violation. An Athlete (…) can avoid the application of this Article by admitting the Anti-Doping Rule Violation as asserted promptly after being confronted with the Anti-Doping Rule Violation by an (ADO)".*

162. The Panel is of the opinion that the wording of Article 10.6 of the ADC does not require the imposition of a four-year sanction in all cases of aggravating circumstances, but rather leaves the Panel a considerable margin of appreciation.

163. It is correct that in the jurisprudence of the CAS, the four-year period of ineligibility is in general imposed where aggravating circumstances exist, although the facts of various cases tend to be distinguishable. That was the case in the CAS award of 30 November 2012 in the case CAS 2012/A/2773, where the sole arbitrator noted that the discretion in imposing an increased ineligibility period meant that a single example of aggravating circumstances may warrant the maximum period, while multiple examples may call only for a lesser penalty (§94). In that case, two types of aggravating circumstances were found and the sole arbitrator therefore imposed a four-year period of ineligibility. The same reasoning was followed in the 14 March 2014 award in the case CAS 2013/A/3080, where the athlete was found to have used a Prohibited Substance or Method on several occasions and her conduct amounted to a doping plan. In that case, the panel imposed a sanction of two years and nine months, stating that the maximum period would be too harsh, based on the circumstances of the case. Finally, in the case CAS 2013/A/3373 (award of 6 March 2015), the athlete was tested positive for two anabolic steroids on several occasions, she used those Prohibited Substances for approximately 6 months and she committed a distinct anti-doping violation. In addition, the athlete's conduct constituted a doping scheme. In that case, the panel found that a period of ineligibility of three years was just and proportionate. These cases show that the CAS panels impose the appropriate sanction according to the case at hand.

164. However, other cases have seen the imposition of a three-year period of ineligibility related to a single violation in the presence of two anabolic steroids (International Rugby Board v/ Roman Kulakivskiy, decision of the Judicial Committee of 21 June 2013; UK Anti-Doping v/ Mark Edwards, decision of the Anti-Doping Tribunal of 7 June 2011).

165. In view of the above, and after careful consideration of the case law, the Panel considers that in the present case, the Appellant used two Prohibited Substances that were anabolic steroids aimed at enhancing his performance. Despite the fact that this was his first anti-doping offence, the Panel considers that the period of ineligibility should be increased, based on this aggravating circumstance. However, the Panel agrees with the Appellant that a four-year period is not proportionate given the circumstances of the case.

166. For the above reasons, the Panel decides that the period of ineligibility shall be three years and shall start from 16 October 2014, which is the start date of his provisional suspension. As a consequence, the appeal shall be partially upheld on this issue.

167. Regarding the fine of EUR 1'500, and the disqualification of results subsequent to 18 September 2014 imposed by the Decision, the Appellant requested the setting aside of these sanctions, while the Respondent asked for their confirmation. However, the parties did not develop any particular arguments regarding these sanctions.

168. The Decision based the disqualification of results on Article 10.8 of the ADC, which states:

> *"In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other Anti-Doping Rule Violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes".*

169. Based on this provision, the Panel holds that the disqualification imposed by the Decision shall be upheld. In particular, there are no particular circumstances based on fairness that would justify the contrary.

170. As to the fine, it was based on Article 10.11 of the ADC that provides:

> *"The IPC or NPCs may, in their own rules, provide for financial sanctions on account of Anti-Doping Rule Violations. However, no financial sanction may be considered a basis for reducing the period of Ineligibility or other sanction which would otherwise be applicable under the Code".*

171. An Appendix to the ADC called "Rules on the imposition of financial sanctions for anti-doping rule violations" supplements the provision of Article 10.11 of the ADC. Its paragraph 4 provides that *"the amount of the financial sanction shall be one thousand five hundred Euros (€1,500) unless (i) the hearing body recommends that such amount shall be reduced or eliminated or (ii) the Governing Board decides to reduce or eliminate the amount of financial sanction".*

172. The comments to Article 10.11 of the ADC specify that *"if a hearing body were to find in a case that the cumulative effect of the sanction applicable under the Code and a financial sanction provided in the rules of an Anti-Doping Organization would result in too harsh a consequence, then the Anti-Doping Organization's financial sanction, not the other Code sanctions (e.g., Ineligibility and loss of results), would give way".*

173. In the present case, the Panel considers that the imposition of the EUR 1'500, fine, in addition to the three-year period of ineligibility and the disqualification of results, is proportionate and it is not too harsh, because of the limited amount of this fine.

174. In conclusion, the fine of EUR 1'500, as well as the disqualification of results subsequent to 18 September 2014 imposed by the Decision, are upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Iago Gorgodze against the Decision of the IPC Anti-Doping Committee dated 8 December 2014 is partially upheld.

2. The Decision of the IPC Anti-Doping Committee dated 8 December 2014 is partially annulled.

3. A period of ineligibility of three (3) years is imposed on Mr Iago Gorgodze, starting on 16 October 2014.

4. The remainder of the Decision of the IPC Anti-Doping Committee dated 8 December 2014 is confirmed.

(…)

7. All other or further claims are dismissed.